

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

TISHOMINGO RAILROAD COMPANY, INC.,
and R. BRUCE CRAWFORD, Individually

PLAINTIFFS

V.

CIVIL ACTION NO. 1:06CV343-B-D

BELLSOUTH TELECOMMUNICATIONS, INC.

DEFENDANT

ORDER

This cause comes before the court upon the defendant's motion to reconsider this court's order denying the defendant's motion for summary judgment. Upon due consideration, the court finds that the motion is not well taken and should be denied.

The defendant asserts that the court has "overlooked or misapprehended a dispositive legal issue, namely, that BellSouth's vested rights under 1886 Miss. Laws, Chapter 38, § 1 (the '1886 Act') entitle BellSouth to use any public railroad right-of-way allegedly occupied by Plaintiffs R. Bruce Crawford and Tishomingo Railroad Company, Inc., (collectively, 'TRC') for the operation of BellSouth's telephone lines and for other like purposes without the payment of compensation."

The court finds that the plaintiffs have set forth genuine and material factual questions in their response to the defendant's argument, specifically, that TRC is exempt from the 1886 Act. This contention is at best a mixed question of law and fact, and the court finds that the matter should be resolved at trial – not by a summary judgment ruling. Further, this court has the inherent power, which it exercises here, to allow this case to proceed to trial when doing so would appear to be the better course of action. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case

where there is reason to believe that the better course would be to proceed to a full trial.”).

For the foregoing reasons, the court finds that the defendant’s motion for reconsideration should be and the same is hereby, **DENIED**.

SO ORDERED AND ADJUDGED this, the 24th day of September, 2009.

/s/ Neal Biggers

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE